

# Exhibit 3

**From:** [Ross, Ashley](#)  
**To:** [Lenning, Nicholas F.](#)  
**Cc:** [Pogorzelski, Henry M.](#); [Michael Smith](#); [Neufeld, Courtney A.](#); [Nagamine, Ruby A.](#); [Cutri, Gianni](#); [Herbert, Benjamin Allen](#); [Morrill, Drew](#); [Li, Kat](#); #Rhodium-Midas  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions  
**Date:** Tuesday, December 20, 2022 6:16:57 PM

---

Nick,

The fact that you have for weeks ignored our emails on other issues - as laid out in my email below - while simultaneously demanding a meet and confer on a one-sided, early "deadline" that is not required under the OGP is not well taken. We can be available Wednesday or Thursday to discuss **all** of the issues raised in my email below. Please confirm Midas will be prepared to discuss all issues raised in my email below.

In the meantime, please provide answers to my questions below. If Midas refuses, please provide your basis for doing so.

Regards,

Ashley

**Ashley Ross**

---

**KIRKLAND & ELLIS LLP**

601 Lexington Avenue, New York, NY 10022

T +1 212 446 4954

F +1 212 446 4900

---

[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)

---

**From:** Lenning, Nicholas F. <[Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com)>  
**Sent:** Thursday, December 15, 2022 6:16 PM  
**To:** Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>; Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

Ashley,

We again request that Defendants' provide their availability to meet and confer, as requested in my previous email. We intend to file a motion with the Court to modify the scheduling order to add the January 6, 2023 deadline for substantial completion of non-email discovery, as well as production of associated privilege logs. We do not agree to tying non-email discovery, for which there is no reason the parties cannot comply with their discovery obligations, to email discovery, the bounds of which the parties are still negotiating.

Best,

Nick Lenning  
K&L Gates LLP  
(206) 370-6685  
He/Him/His

---

**From:** Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>  
**Sent:** Thursday, December 15, 2022 2:17 PM  
**To:** Lenning, Nicholas F. <[Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>; Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

Nick,

It's disappointing that, despite Midas' representation a month ago that it would provide a proposed ESI stipulation, it has not done so. Your email does not address any of the concerns I raised. To set forth those questions again:

1. Will Midas provide the documents it has received through third party discovery to us now? If not, please provide the basis for Midas' refusal.
2. What is Midas' proposal for an ESI stipulation? We expect such stipulation would lay out:
  - a. the custodians the parties have agreed to search

- b. the search terms the parties are going to use
- c. the metadata that shall be produced with email discovery
- d. the scope and content of any privilege log that the parties are going to complete - for instance, whether logs should contain documents and correspondence created after the filing of the complaint

It makes little sense to set the deadline that you have suggested below, which parses out ESI discovery from non-ESI discovery. We therefore propose discussing a deadline -- set after the holidays -- for the parties to substantially complete all document production.

We furthermore request an update each of the following outstanding issues:

- Midas' analysis of Mr. Koen's hard drive.
- When Midas will provide Rhodium with the materials it has received pursuant to third party subpoena requests in this litigation.
- Whether Midas agrees with the draft Protective Order that Ben sent over a month ago on November 1
- Midas' response to the issues raised in Ben's October 19 email, from almost two months ago (to which Midas responded that it would respond "shortly")

We look forward to receiving your responses.

Regards,

Ashley

**Ashley Ross**

KIRKLAND & ELLIS LLP  
601 Lexington Avenue, New York, NY 10022  
**T** +1 212 446 4954  
**F** +1 212 446 4900

[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)

---

**From:** Lenning, Nicholas F. <[Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com)>  
**Sent:** Wednesday, December 14, 2022 6:58 PM  
**To:** Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>; Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

Ashley,

We have not received a response to the below. Please either confirm, provide a counter-proposal, or provide Defendants' availability to meet and confer this week. Thank you.

Best,

Nick Lenning  
K&L Gates LLP  
(206) 370-6685  
He/Him/His

---

**From:** Lenning, Nicholas F.  
**Sent:** Thursday, December 08, 2022 9:14 AM  
**To:** 'Ross, Ashley' <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>; Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

Ashley,

Midas proposes January 6, 2023 as the mutual deadline for substantial completion of non-email document productions and privilege logs. Please confirm Defendants agree. If Defendants do not agree, please send your counter-proposal and provide a time to meet and confer.

Best,

Nick Lenning  
K&L Gates LLP  
(206) 370-6685  
He/Him/His

---

**From:** Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>  
**Sent:** Thursday, December 01, 2022 11:31 AM  
**To:** Lenning, Nicholas F. <[Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>; Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

Nick

Thank you for your follow-up email. Defendants note that this is the second time that Midas has made demonstrably false accusations about Defendants' discovery responses and obligations without taking the time to verify whether Midas' accusations have merit. We once again request that Midas refrain from making such unfounded accusations. Defendants are diligently working to identify, gather, and produce, additional materials responsive to Midas's requests for production.

It is not lost on Defendants that Midas has similarly produced very little responsive material in this action, producing only a handful of materials outside of documents Midas previously produced in the Immersion litigation, and has provided no materials received from third-parties in response to subpoenas. To the extent Midas has received such third-party materials, please provide them to us immediately, or, if you have received such materials and intend to withhold them, please provide your basis for doing so.

In regard to your request that we "provide a date certain when Defendants, including the Individual Defendants, intend to substantially complete their document productions," as noted on the last two meet and confers, the parties should come to a mutual agreement on this and the privilege log. The parties are still actively engaged in negotiations regarding search terms and custodians for ESI collection, as well as on an overarching ESI search protocol, and as such the scope of necessary remaining discovery remains unclear. On our last call on ESI issues, we had asked that you provide a full ESI proposal, but have not received it. We therefore propose that Midas provide the ESI proposal that was discussed on our November 10 call by tomorrow so that we may consider it in advance of a call mid-next week to discuss. Please confirm your agreement and provide your availability.

Best,

Ashley

**Ashley Ross**

---

**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue, New York, NY 10022  
**T** +1 212 446 4954  
**F** +1 212 446 4900

---

[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)

---

**From:** Lenning, Nicholas F. <[Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com)>  
**Sent:** Monday, November 21, 2022 7:01 PM  
**To:** Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>; Herbert, Benjamin Allen <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Cc:** Pogorzelski, Henry M. <[Henry.Pogorzelski@klgates.com](mailto:Henry.Pogorzelski@klgates.com)>; Michael Smith <[Michael.Smith@Solidcounsel.com](mailto:Michael.Smith@Solidcounsel.com)>; Neufeld, Courtney A. <[Courtney.Neufeld@klgates.com](mailto:Courtney.Neufeld@klgates.com)>; Nagamine, Ruby A. <[Ruby.Nagamine@klgates.com](mailto:Ruby.Nagamine@klgates.com)>  
**Subject:** RE: Midas v. Rhodium - Defendants' document productions

Counsel,

I wanted to correct the number of documents as my prior email was inaccurate. The correct number is 30, not 13, excluding public custodian documents and the Christiaan Best declarations. Apologies for the error which I just discovered. The points in my email, however, stand. Please let us know when Defendants intend to produce documents in response to Midas' discovery requests and substantially complete their production. Thank you.

Best,

Nick Lenning  
K&L Gates LLP  
(206) 370-6685  
He/Him/His

---

**From:** Lenning, Nicholas F.  
**Sent:** Saturday, November 19, 2022 6:57 AM  
**To:** Cutri, Gianni <[gcutri@kirkland.com](mailto:gcutri@kirkland.com)>; Ross, Ashley <[ashley.ross@kirkland.com](mailto:ashley.ross@kirkland.com)>; 'Herbert, Benjamin Allen' <[benjamin.herbert@kirkland.com](mailto:benjamin.herbert@kirkland.com)>; Morrill, Drew <[drew.morrill@kirkland.com](mailto:drew.morrill@kirkland.com)>; Li, Kat <[kat.li@kirkland.com](mailto:kat.li@kirkland.com)>  
**Subject:** Midas v. Rhodium - Defendants' document productions

Counsel,

We write concerning Defendants' document productions. To date, Defendants have produced only 13 documents that are not either prior art or captures of publicly available materials. Rhodium has produced no such documents since its initial technical document production and the Individual Defendants have produced no documents at all. Defendants have produced no documents in response to Midas' RFPs served September 6 or the ROGs to which Defendants gave a Rule 33(d) response on October 6.

Defendants' delay in producing documents responsive to discovery requests is prejudicial to Midas. We ask that Defendants please provide a date certain when Defendants, including the Individual Defendants, intend to substantially complete their document productions.

Best,

Nick Lenning

[Redacted]  
Nick Lenning  
K&L Gates LLP  
925 Fourth Avenue, Suite 2900  
Seattle, WA 98104  
Phone: (206) 370-6685  
Fax: (206) 623-6449  
Pronouns: He/Him/His  
[nicholas.lenning@klgates.com](mailto:nicholas.lenning@klgates.com)  
[www.klgates.com](http://www.klgates.com)

any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at [Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com).

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at [Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com).

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at [Nicholas.Lenning@klgates.com](mailto:Nicholas.Lenning@klgates.com).